

**Appl. No.** : 10/829,135  
**Filed** : April 21, 2004

REMARKS

This is in response to the Office Action mailed September 29, 2005. Submitted herewith is the Declaration of (inventor) Jeffrey Dunmire, the pertinence of which is detailed below.

By the Office Action, the Examiner indicated the rejection of Claims 1-14 under 35 U.S.C. § 103(a) as being unpatentable over FDP Magnetics either alone or in view of Fontana (USN 4625508), and indicated the rejection of Claims 1-14 under 35 U.S.C. § 102 as anticipated by [BillyTheTree.com](http://www.BillyTheTree.com).

BillyTheTree.com Is Not Prior Art

As an introductory point, Applicant asserts that the [BillyTheTree.com](http://www.BillyTheTree.com) reference is not citable as prior art. As indicated in M.P.E.P. § 2128.01, if an Internet publication does not include a publication date, it can not be relied upon as prior art under § 102 (a) or (b). In this instance, the [BillyTheTree.com](http://www.BillyTheTree.com) reference does not list an actual publication date, but a copyright date. That date may not be the publication date of all content on the website, and specifically, the cited 'venus' bracelet. In fact, Applicant notes that the Wayback Machine ([www.archive.org](http://www.archive.org)) contains no record of this website having been published in 2003. Lastly, Applicant asserts that even were the cited material published in 2003 there is no evidence establishing it was published in 2003 before the priority date of the application.

Appl. No. : 10/829,135  
Filed : April 21, 2004

Claims 1-14 Relative to FDP Magnetics

Applicant notes that FDP Magnetics' products are representative of the prior art. These magnetic jewelry products are precious metal over base metal "plated" jewelry products which incorporate standard, cylindrical magnets. See J. Dunmire Declaration at ¶¶ 5 and 9. These prior art product designs have numerous drawbacks which the present invention overcomes. J. Dunmire Declaration at ¶¶ 1-10.

First, the prior art does not suggest the use of solid precious metal links. FDP Magnetics' products are plated. While Fontana mentions that titanium has been used for watch chains, Fontana actually teaches away from use of that material, specifically noting that titanium is disfavored because of machining difficulties. Because the links of the magnetic jewelry must be machined, such as to form the hole in which the magnet is located and link connection holes and notches, one would view Fontana as suggesting that titanium is not suitable.

Applicant also asserts that it is not obvious to simply increase "magnet size" as suggested by the Examiner. Moreover, Applicant asserts that such a suggestion does not lead to the claimed configuration of magnet to jewelry surface area.

There is a teaching away from the concept of increasing magnet size with respect to magnetic jewelry. The well-accepted prior art configuration is to mount cylindrical magnets in mating holes in the back of jewelry. In the case of elongate jewelry elements, such as bracelet links, the total size of the magnet is constrained. In particular, the diameter of the magnet must be chosen so that it fits within the smallest dimension of the link (the narrow "height" of the link) and still retain sufficient link "edge" material to ensure link integrity. As a result, current magnetic jewelry configurations

Appl. No. : 10/829,135  
Filed : April 21, 2004

have a magnet to link surface area which is very low (for example, if a link were 0.5 inches long and 0.25 inches tall, with a magnet diameter of 0.125, then the ratio of magnet area (0.01227) to link area (0.125) is 9.8%). When considering this configuration, an increase in the size of the magnet (which results in an increase in diameter and depth of the magnet) necessitates a corresponding increase in the size of the link to accommodate the magnet (to maintain the required supporting link material depth). This, however, causes the total size and mass of the jewelry to increase undesirably. Moreover, even if such a step were taken, as magnet size increases, so does link size, thus causing the ratio of magnet surface area to link surface area to at most remain stagnant, if not decrease. See J. Dunmire Declaration at ¶¶ 5, 11 and 13.

In addition, there is a teaching away from other configurations which might avoid the above-referenced problems associated with merely attempting to increase the overall magnet size. Among other things, the cylindrical magnet configuration is favored owing to a number of factors such as reduction in stress points and ease of manufacturing in a punch process. See J. Dunmire Declaration at ¶¶ 13-14. Unexpectedly, Applicant found that an oval magnet configuration enables a larger magnet to link surface area ratio to be achieved, maintains minimal stress points, and can be manufactured using a punch procedure (rather than much more costly molding, laser etching or the like). See J. Dunmire Declaration at ¶¶ 15-16.

In general, Applicant notes that there has been a long felt-need for the development of magnetic jewelry which overcomes a variety of problems associated with current configurations. This need was not solved until the introduction of the present invention. Evidence of this fact is that

Appl. No. : 10/829,135  
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since the invention was publicly introduced, it has been quickly copied by competitors owing to the fact that prior art designs are so inferior to the invention. See J. Dunmire Declaration generally.

Claims 1-14 Relative to BillyTheTree.com

Applicant again asserts that Claims 1-14 are allowable over BillyTheTree.com for the reason that the reference is not prior art, and indicated above. Moreover, even if the reference were prior art, Applicant asserts that the invention as claimed is novel and non-obvious over BillyTheTree.com. In particular, Applicant asserts that this reference does not teach or suggest various claimed aspects of the invention, including the claimed magnet to link surface area ratio. BillyTheTree.com merely teaches use of common cylindrical magnets which suffer from the above-referenced drawbacks.

New Claims 15-18

Applicant asserts that Claims 15-18 are allowable over the prior art for the reasons detailed above and in the Declaration of J. Dunmire submitted herewith.

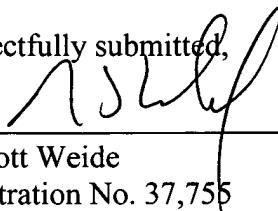
Appl. No. : 10/829,135  
Filed : April 21, 2004

Summary

Applicant asserts that Claims 1-18 are in a condition for allowance. If any matters remain outstanding, the Examiner is invited to contact the undersigned by telephone.

Respectfully submitted,

Dated: February 3, 2006 By:

  
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